Comment to the FCC Petition #02-278

"Petition to the FCC from the Consumer Bankers Association (CBA) regarding 'Certain Provisions of the Indiana Revised Statutes and Indiana Administrative Code'"

The CBA petition seeks to reduce the additional protections afforded by the State of Indiana to their citizens relative to that which is afforded in the Federal "DO NOT CALL" protections.

The CBA, in its petition, notes a significant difference between the criterion for making a telemarketing call under Federal rules and those in force in the State of Indiana, assuming the one being called has sought protection from telemarketers by having enrolled in a DO-NOT-CALL registry.

Quoting from the CBA's own petition, the CBA states that the Federal rules allow telemarketing calls to those having an established business relationship as defined by a "prior or existing relationship formed by a voluntary two-way communication between a person or entity and a residential subscriber with or without an exchange of consideration on the basis of the subscriber's purchase or transaction with the entity within the eighteen (18) months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months preceding the date of the call, which relationship has not been previously terminated by either party."

The Indiana rules are more stringent. Again, quoting from the CBA petition, the CBA indicates that telemarketing calls are allowed to those having an established business relationship if either of the following criteria are met:

1: A telephone call made in response to an express request of the person called.
2: A telephone call made primarily in connection with an existing debt or contract for which payment or performance has not been completed at the time of the call.

Further, the CBA attempts to frame their petition on the basis of this disparity and does so by saying that the Commission allows this narrowed interpretation to be imposed for intrastate calls but not interstate calls. It is clear that if the interstate restriction were lifted, then these banks would simply make their telemarketing calls from outside the State of Indiana, thereby gutting this consumer protection. It would be fairly simple for them to do so, as most of the larger banks that stand to benefit from this change of the rules are large regional banks having multi-state businesses. Calls terminating in Indiana, regardless of their origin are equally disruptive to the citizens of Indiana.

In addition, the CBA indicates that it is virtually their corporate responsibility to illuminate inconsistencies in Federal law with respect to State law for the purposes of fulfilling Congress' will in providing a "uniform regulatory scheme under which

telemarketers would not be subject to multiple, confusing regulations" (line 5, page 5, CBA petition dated 19 Nov 2004). It would therefore seem that these institutions are incapable of keeping track of the differences in the state-to-state regulations that exist in those states in which they do business. This is curious since they do, in fact, do business in various states, and certainly the laws do already vary from state to state. Are they incapable of keeping the laws straight, or do they point to this difference between State and Federal law so that if the Federal interpretation were enforced, the CBA members would have a work-around relative to this more restrictive Indiana law?

As a citizen of the State of Indiana, I certainly appreciate the protections that our State has enacted. Our law's threshold for allowing companies to make calls to its citizens successfully distinguishes between calls made for legitimate business reasons and those made for "cold-call" telemarketing purposes.

Like spam, most people dislike these interruptions to their privacy and in the case of telemarketing calls, these calls have the further distinction of having the potential of interrupting family dinners, children's homework and family time spent together.

Should it be permissible to allow these interruptions when citizens have taken the specific, overt action of having enrolled in their State's DO-NOT-CALL list?

I would suggest that such interruptions are not permissible, and allowing such interruptions would ignore the People's will. The desire of individuals wishing to receive telemarketing calls is not ignored, as those people would have not enrolled on the DO-NOT-CALL list in the first place if having those calls were their wish.

I urge the Commission to choose to favor the will of the People and to support States' Rights by upholding Indiana law.

Sincerely,
Harry Diamond
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20 February 2005